

## The first tier

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The issue that initially had provoked so much agitated debate in the Ukrainian policy-making and opinion-forming circles seemed to have vanished amidst the summer heat and the vacation season. When President Kuchma signed his decree on introducing the institution of state secretaries, immediately after the parliament voted approval to the appointment of Anatoly Kinakh to the position of the Prime Minister of Ukraine, a number of analysts and observers saw the new order almost as a quiet revolution and transformation of Ukraine into a presidential republic.

On May 29, 2001, President Kuchma signed a decree «On More Measures for Further Implementation of the Administrative Reform in Ukraine» that introduced positions of the Secretary of State of the Cabinet of Ministers and state secretaries of individual ministries. According to the decree, state secretaries were to be appointed by the president for five years and were supposed to become a sort of «institutional memory» in the Cabinet and ministries, as they were not subject to resignation once a minister or the entire Cabinet resigned. The only way for ministers to get rid of their state secretaries was if the president dismissed them due to their failure to perform their formal tasks as due (again, the decree did not specify what was «due» and whether dismissal would be a necessary method of influencing inefficient state secretaries), or if a state secretary was found guilty of a crime by the court, or for the reason of poor health. The decree also abolished positions of first deputy ministers and deputy ministers and confirmed what other legal documents on the administrative reform had proclaimed but what was hardly practiced: the prime minister, vice prime ministers and ministers were declared to be political figures who were not subject to the law «On Civil Service» and whose task was to provide organizational and political guidance of the ministries. All other practical functions were delegated to state secretaries.

At first the decree caused near shock - particularly among those who had expected to broaden their influence on the decision-making process through newly appointed ministers and their deputies. For instance, Oleksandr Volkov, MP, was hardly too enthusiastic about the president's new idea, given his earlier comment that the new government would include «from 30% to 40% of representatives of certain parliamentary factions» (UNIAN, May 29, 2001). Leonid Kuchma's usual critics also did not remain indifferent to the new decree. On June 1, 2001, leader of the Socialist party Oleksandr Moroz announced that his party had prepared an appeal to the Constitutional Court of Ukraine protesting against Kuchma's new decree as unconstitutional (UNIAN, June 1, 2001). According to Moroz, the Socialist faction was prepared to initiate the collection of signatures in the parliament in support of the appeal (in order to submit an appeal to the Constitutional Court of Ukraine, signatures of at least 45MPs are required). The position of Oleksandr Moroz and his supporters was clear: the president's decree infringed on the Constitution, «when in fact that administration of the president duplicates the functions of the Cabinet of Ministers in the form and methods that are just beyond common sense» (UNIAN, June 1, 2001). Oleksandr Moroz, who saw the would-be state secretaries as «commissars attached to commanders» (and, in fact, he was not the only one to think about that analogy) believed that Leonid Kuchma who «did not want to see an independently operating Cabinet of Ministers, and there was a need to create positions whereby someone in the government is above the prime minister and the ministers», «found the way to protect himself and interests of his circle». According to Moroz, the president's decree contained «complete switch of functions of the executive branch» - from the Cabinet to the presidential administration, which could be yet another argument in favor of Moroz's claim about «usurpation of power in Ukraine». The theme of «de facto usurpation of power by President Leonid Kuchma was repeated by Serhiy Holovaty, MP (UNIAN, June 1, 2001). Holovaty also made some critical remarks about his colleagues in the parliament - particularly the two Rukhs and the Reforms and Order - as well as other representatives of the national-democratic opposition who, in his words, «do not want to struggle for democracy». Actually, leader of the Reforms and Order Victor Pynzenyk also criticized the president's decree: «Introduction of positions of the Secretary of State of the government and state secretaries of the ministries in fact liquidates the institution of the Cabinet of Ministers» which «becomes butaforical». He also added the party could initiate an appeal to the Constitutional Court against the decree. However, neither Moroz nor Pynzenyk proceeded beyond the

statements...

There was a little intrigue, as well. On June 1, 2001, international experts who took part in drafting the decree announced that its final version differed substantially from the initial idea it was supposed to introduce. According to a representative of a DFID group involved in assisting Ukraine's pursuit of the administrative reform who took part in drafting provisions for separating the political and administrative functions of the executive branch, «the idea to introduce the institution of state secretary - a professional manager, a non-politician, was shared by everyone involved in development of the administrative reform in Ukraine» (UNIAN, June 1, 2001). The idea definitely made sense: frequent massive reshuffles in ministries made futile every effort to improve the government's capacity by training civil servants to perform their functions effectively. However, the initial version of the draft decree, based on European experience, provided that state secretaries would be appointed by the Cabinet. However, the signed version of the decree caused more questions than gave answers. And the key question was what the functions of ministers would be and who would be accountable for formulation, development and implementation of specific policies.

On May 30 the president signed another decree, appointing the Secretary of State of the Cabinet of Ministers of Ukraine. The senior position was given to a representative of the Dnipropetrovsk power elite Volodymyr Yatsuba, previously first deputy to Government Secretary Victor Lysytsky (probably, the only Yushchenko's man in the ousted «Yushchenko government», whose position was abolished by the decree on state secretaries), and earlier first deputy chief of staff of the presidential administration. Leonid Kuchma also appointed four Deputy Secretaries of State - all former deputies to Lysytsky - Tymofiy Motrenko, Kostyantyn Petrov, Natalia Nesterenko and Petro Krupko. Then there was a rather long pause in the state secretary theme. In early July Director of the Institute of Politics Mykola Tomenko even suggested that President Kuchma might drop the idea of introducing the positions of state secretaries because that «creates a danger of conflict between ministries and state secretaries who receive more powers than the ministers themselves» and because «ministers and Prime Minister Anatoly Kinakh have convinced the president that the step was wrong on the eve of the parliamentary elections» (UNIAN, July 2, 2001). However, by mid-July President Kuchma had decreed an «Exemplary Provision about State Secretary of a Ministry» (UNIAN, July 14, 2001), which specified that «state secretary of a ministry is an official whose task is to provide for activities of the minister and organization of work for implementation of the ministry's tasks», and that a state secretary was accountable to and controlled by «his» minister. According to the Provision, «the state secretary is guided in his activities by the Constitution and the laws of Ukraine, acts and tasks [given by] the President of Ukraine, the Cabinet of Ministers and the Prime Minister, as well as by orders and tasks [given by] the minister.» Noteworthy, recommendation by the prime minister is required only for the appointment of state secretaries and deputy state secretaries by the President, but not for dismissing them. The provision that appointment of a state secretary and his or her deputies should be agreed with the relevant minister appears to be a mere formality. However, the president himself seems to be increasingly aware of potential powers of state secretaries. On June 30 he publicly stated he saw no need «at the present stage» to introduce a position of the state secretary in the Ministry of Defense of Ukraine and did not exclude that a future Minister of Defense should be a civilian (UNIAN, July 2, 2001).

On July 19, 2001, Prime Minister Anatoly Kinakh submitted «the first package of proposals» - names of candidates for positions of state secretaries of ministries (UNIAN, July 19, 2001) and publicly stated that later on there would be «a complex process of agreement on candidacies, and regarding some [of them] the government will even seek a political compromise with the Verkhovna Rada as the basis for cooperation for the future period.» On July 24 President Kuchma decreed the appointment of state secretaries: Deputy Minister of Agrarian Policy Serhiy Ryzhuk became State Secretary of the Ministry of Agrarian Policy; Ukraine's Ambassador to Lithuania Valentyn Zaichuk became State Secretary of the Ministry of Education and Science; head of the Committee for Geology and Use of the Entrails Serhiy Hoshovsky became State Secretary of the Ministry of the Environment and Natural Resources. First Deputy Minister of Labor and Social Policy Petro Ovcharenko became State Secretary of the Ministry of Labor and Social Policy; head of the Chief Control and Revision Department Mykola Kalensky became State Secretary of the Ministry of Finance; First Deputy Minister of Culture and Arts Vasyl Stasiuk became State Secretary of the Ministry of Culture and Arts; head of the Chief Control Department of the Administration of the President of Ukraine Volodymyr Pershin was appointed to the position of State Secretary of the Ministry of Economy. First Deputy Head of the State Committee for Industrial Policy Victor Padalko became State Secretary of the Ministry of Industrial Policy; First

Deputy Minister of Foreign Affairs Yuri Sergeyev became State Secretary of the Ministry of Foreign Affairs, head of the Rada Subcommittee for Legal Provisions for Law-Enforcement Serhiy Shevchuk became State Secretary of the Ministry of Health Care (!?); head of Strategic Development Department of the Ministry of Transport Oleg Petrenko became State Secretary of the Ministry of Transport; former staffer of the Cabinet Secretariat Vasyl Lutsko became State Secretary of the Ministry of the Emergencies and Protection of the Population from the Chornobyl Aftermath. Finally, Secretary of the Parliamentary Committee for Legal Policy Oleksandr Lavrynovych became State Secretary of the Ministry of Justice.

Hence, six out of 13 newly-appointed state secretaries simply changed their offices of first deputy ministers, deputy ministers or heads of departments to the chairs of state secretaries in «their» ministries, while some other look like true «invaders» who will strengthen the influence of the president and his administration on the ministries. At least one of the newly-appointed state secretaries - member of the Rukh, head of the parliamentary commission in charge of investigation of the Gongadze case Oleksandr Lavrynovych, MP, is likely to have some problems both as a party activist and as a newcomer to the rigid nomenclature system of the executive branch.

Some ministers already reacted to appointment of their state secretaries. Minister of Transport Valery Pustovoitenko, for instance, introduced «his» state secretary Oleg Petrenko as a «worthy candidate for the job» (UNIAN, July 25, 2001). However, most of the ministers so far have refrained from public comments about their newly appointed «commissars».

According to the official version, «the pro-statehood meaning of the institution of state secretaries is obvious; it is aimed primarily at strengthening the state foundations in governance, raising efficiency of civil service; [it will] contribute to disallowing formation of several centers of influence in ministries, the emergence of discord in actions of the minister and the apparatus» (Uriadovi Kurrier, July 27, 2001). A noteworthy comment about prospects of the institution of state secretaries was made by First Vice Speaker Victor Medvedchuk: «The key aspects should be confirmed and regulated not by a decree of the President of Ukraine but by the law on the Cabinet of Ministers, ministries and state departments», otherwise if «a minister and a state secretary represent the political and the administrative centers separately, and their subordination is also different, that will bring no good in terms of the administrative reform and development of state bodies» (Holos Ukrainy, July 26, 2001).

Meanwhile, the law that would regulate the issues of the executive branch, «On the Cabinet of Ministers of Ukraine», has not been adopted yet, and, given the development of the state secretary theme, there is little probability that it will be adopted by this parliament. On February 7, 2001, Igor Koliushko, MP (Reformy-Kongres faction) submitted a new version of the draft law «On the Cabinet of Ministers of Ukraine» to substitute for the law, approved by the parliament on November 19, 1999 but vetoed by President Kuchma. On March 22, 2001, the parliament approved the new draft in the first reading. Among other things, the draft stipulates that «the Cabinet of Ministers of Ukraine is accountable to the President of Ukraine and is controlled by, and reports to the Verkhovna Rada of Ukraine within the scope envisaged by the Constitution of Ukraine». The draft also provides that the president must consult the speaker of the parliament and leaders of parliamentary groups and factions about candidates for the position of the prime minister. Moreover, the draft stipulates that all members of the new Cabinet must take the oath of allegiance to the people of Ukraine at a plenary session of the parliament within 5 days after the new government is formed. On June 6, 2001, Ihor Koliushko announced that the draft bill was ready for the second reading, but the last say remained with the ad hoc special commission chaired by Vice Speaker Stepan Havrysh who, according to Koliushko, was reluctant to introduce the draft bill to the parliamentary debate, arguing that such an actions would be «inappropriate» under the circumstances (UNIAN, July 6, 2001).

Appointment of state secretaries has formalized what was already obvious: the leadership of the executive branch, the Cabinet of Ministers, is responsible for almost everything when things go wrong, but does not really have any independent influence on the course of affairs. Instead, the presidential administration which is by definition not supposed to have any impact on the executive branch but serve exclusively as the apparatus of the president's office, has received a critical lever of influence on the decision-making process.

The president's decree removed one of the most controversial issues of the spring-2001 political season - the issue of building a coalition government - till some indefinite later point. The ranking of a

ministerial position also decreased noticeably, as ministers - «politicians» have lost a substantial share of their influence and their weight on the political chessboard has been reduced. The ministers themselves have become remarkably quiet and timid in their statements - though the contrary would be logical given their newly received «political» function.

According to Anatoly Kinakh, the fact that the president appointed the state secretaries means that Ukraine has succeeded in creating an optimal, effective vertical structure of the executive branch and conditions for building «firm professional tandems «minister - state secretary» that should work over raising efficacy of work in branches and ministries» (UNIAN, July 25, 2001). It remains to be seen if his words reflect the real situation or just demonstrate respect for the senior will just a bit short of executive masochism.

The presidential decree put a number of «landmines» under the executive branch - primarily because state secretaries were given control not only over the ministries' budgets, but also over the budgets of the entire relevant sectors, i.e., given the power that «ministers - politicians» could only dream about. The access to the notorious «administrative resource» proves to be a particularly significant factor in the context of the forthcoming parliamentary elections. Furthermore, one can hardly expect acceleration of the administrative reform once the control over the executive branch has been concentrated in the single hands and the legislative basis of the administrative reform has not been clearly defined - and it unlikely to be settled at least until after the 2002 parliamentary elections.